

traded fund share ("ETF") options, QQQQ options and trust issued receipt ("HOLDR") options. Accordingly, the BD Auto-Ex Fee in connection with FROs would provide that orders for the account of specialists, ROTs and non-member market makers that are automatically executed on the Exchange be subject to (i) a \$0.50 per contract side options transaction fee, (ii) a \$0.05 per contract side options comparison fee and (iii) \$0.05 per contract side options floor brokerage fee.<sup>8</sup> Similarly, FRO orders for the account of member broker-dealers (Firms) and non-member broker-dealers (Broker/Dealer) that are automatically executed on the Exchange would be subject to the BD Auto-Ex Fee as follows: (i) A \$0.50 per contract side options transaction fee; (ii) a \$0.04 per contract side comparison fee and (iii) a \$0.03 per contract side floor brokerage fee.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of section 6 of the act,<sup>9</sup> in general, and furthers the objectives of section 6(b)(4),<sup>10</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange notes that the proposed transaction fees are similar to the fees currently charged in connection with transactions in equity options.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to section 19(b)(3)(A)(ii) of the Act<sup>11</sup> and Rule 19b-4(f)(2)<sup>12</sup> thereunder, because it establishes or changes a due, fee, or other charge imposed on members by Amex. Accordingly, the proposal is effective upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-Amex-2008-38 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Nancy Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-38. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the

provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-Amex-2008-38 and should be submitted on or before June 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E8-12073 Filed 5-29-08; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57858; File No. SR-BSE-2008-30]

### **Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Obvious Errors on the Boston Options Exchange**

May 23, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 22, 2008, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange filed the proposal as a "non-controversial" proposed rule change pursuant to Section 19(b)(3)(A)<sup>3</sup> of the Act and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>4</sup> 17 CFR 240.19b-4(f)(6).

<sup>8</sup> See Securities Exchange Act Release No. 47216 (January 17, 2003), 68 FR 5059 (January 31, 2003) (SR-Amex-2002-114). The Exchange recently amended the Options Fee Schedule to clarify that BD Auto-Ex Fees apply to Options Linkage Orders that are automatically executed. See Securities Exchange Act Release No. 57589 (April 1, 2008), 73 FR 18827 (April 7, 2008) (SR-Amex-2008-09).

<sup>9</sup> 15 U.S.C. 78f.

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>11</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>12</sup> 17 CFR 240.19b-4(f)(2).

## **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Section 20 (Obvious Errors) of Chapter V of the Rules of the Boston Options Exchange Group, LLC ("BOX"). The proposed rule change would redefine theoretical price ("Theoretical Price") for the purposes of determining whether an execution price constitutes an obvious error ("Obvious Error"). The text of the proposed rule change is available at the principal office of the Exchange, the Commission's Public Reference Room, and <http://www.bostonstock.com/regulatory/effective.aspx>.

## **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### **A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

#### **1. Purpose**

The Exchange believes that the Obvious Error rules and procedures on BOX provide objective criteria by which certain transactions may be analyzed if believed to have been executed at erroneously high or low prices. Section 20 of Chapter V of the BOX Rules currently defines the Theoretical Price of an options series, if the series is traded on at least one other options exchange, as "the last bid price with respect to an erroneous sell transaction, and last offer price with respect to an erroneous buy transaction, just prior to the trade disseminated by the competing options exchange that has the most liquidity in that option; or if there are no quotes for comparison purposes, as determined by the MRC."

The proposed rule change would re-define Theoretical Price to mean, with respect to options series traded on at least one other options exchange, either the last National Best Bid price (with respect to an erroneous sell transaction) or the last National Best Offer price (with respect to an erroneous buy transaction), just prior to the trade in

question. This would provide the Market Regulation Center ("MRC") with a clearly defined measure of the price on which to base their determination as to whether or not a particular transaction resulted from an erroneous price and thus was an obvious error.<sup>5</sup> If approved, this proposal would continue to permit the MRC to establish the Theoretical Price when there are no quotes available for comparison purposes.

As the proposed rule change would eliminate any comparison to the "competing options exchange that has the most liquidity in that option," the Exchange proposes to remove Supplemental Material .03 to Section 20 of Chapter V of the BOX Rules and modify the formatting of certain portions of the Supplemental Material for the purposes of conforming such formatting to that of the remainder of the BOX Rules. The Exchange also proposes to make a minor change to the rule text to correct an existing typographical error.

#### **2. Statutory Basis**

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(5) of the Act,<sup>7</sup> in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change would establish an objective definition of Theoretical Price when determining whether a particular transaction was or was not an Obvious Error and assure that any price adjustments made to Obvious Errors would not violate the terms of the Options Intermarket Linkage Plan.<sup>8</sup>

### **B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### **C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others**

The Exchange has neither solicited nor received written comments on the proposed rule change.

## **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>9</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>10</sup>

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing.<sup>11</sup> However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay and designate the proposed rule change operative upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Given that the proposed rule change is substantially the same as that of the Phlx, previously approved by the Commission,<sup>12</sup> the proposal does not appear to present any novel regulatory issues. In addition, waiving the 30-day operative delay ensures that the Exchange's obvious error rule conforms to the Options Intermarket Linkage Plan without delay. Therefore, the Commission designates the proposal to be operative upon filing.<sup>13</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(6).

<sup>11</sup> 17 CFR 240.19b-4(f)(6)(iii). The Exchange has satisfied the five-day pre-filing requirement of Rule 19b-4(f)(6)(iii).

<sup>12</sup> See Securities Exchange Act Release No. 57712 (April 24, 2008), 73 FR 24100 (May 1, 2008) (order approving SR-Phlx-2007-69).

<sup>13</sup> For purposes only of waiving the operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>5</sup> The Exchange notes that the Philadelphia Stock Exchange ("Phlx"), see Phlx Rule 1092(b), uses the NBBO to determine the theoretical price of an option.

<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (File No. 4-429) (order approving the Options Intermarket Linkage Plan).

Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in the furtherance of the purposes of the Act.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BSE-2008-30 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BSE-2008-30. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BSE-2008-30 and should be submitted on or before June 20, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>14</sup>

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. E8-12034 Filed 5-29-08; 8:45 am]

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57849; File No. SR-CBOE-2008-16]

#### **Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change To Reduce Certain Order Exposure Times From Three Seconds to One Second**

May 22, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on May 16, 2008, The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to reduce the order handling and exposure periods contained in certain of its rules from three seconds to one second. The text of the proposed rule change is available on the Exchange's Web site (<http://www.cboe.org/Legal>), at CBOE's principal office, and at the Commission's Public Reference Room.

#### **II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B,

and C below, of the most significant aspects of such statements.

#### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

##### **1. Purpose**

The purpose of the proposed rule change is to reduce the order handling and exposure periods contained in Rules 6.45A, *Priority and Allocation of Equity Option Trades on the CBOE Hybrid System*, 6.45B, *Priority and Allocation of Trades in Index Options and Options on ETFs on the CBOE Hybrid System*, 6.74A, *Automated Improvement Mechanism* ("AIM"), and 6.74B, *Solicitation Auction Mechanism*, from three seconds to one second.

Rules 6.45A and 6.45B provide that an order entry firm may not execute an order it represents as agent with a facilitation or solicited order (referred to herein as "crossing orders") using the Hybrid Trading System ("Hybrid") unless it first complies with the three-second exposure requirement. Specifically, order entry firms may not execute a facilitation cross unless: (i) The agency order is first exposed on Hybrid for at least three seconds; (ii) the order entry firm has been bidding or offering for at least three seconds prior to receiving the agency order that is executable against such bid or offer; or (iii) the order entry firm proceeds in accordance with the floor-based open outcry crossing rules contained in CBOE Rule 6.74, *Crossing Orders*. Similarly, order entry firms may not execute an order they represent as agent against orders solicited from members and non-member broker-dealers unless the agency order is first exposed on Hybrid for at least three seconds. During this three-second exposure period for crossing orders, other members may enter orders to trade against the exposed order. Under the proposal, these exposure periods would be reduced to one second.<sup>3</sup>

Rule 6.74A contains the requirements applicable to the execution of orders using AIM. AIM allows members to enter cross transactions on Hybrid. Currently, orders entered into AIM are exposed for a random time period determined by the system that is not less than three seconds and not more than five seconds, giving an opportunity

<sup>3</sup> For Hybrid 3.0 classes, the exposure period is established on a class-by-class basis, provided the minimum exposure time must be at least three seconds and shall not exceed 30 seconds. See CBOE Rule 6.45B.03. The Exchange is proposing to reduce the minimum time from three seconds to one second. The 30-second parameter will remain unchanged.

<sup>14</sup> 17 CFR 200.30-3(a)(12).

<sup>15</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.